

Queensland



TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995

**Reprinted as in force on 21 March 1997
(includes amendments up to Act No. 62 of 1996)**

Warning—see last endnote for uncommenced amendments

Reprint No. 2A

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Information about this reprint

This Act is reprinted as at 21 March 1997. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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[as amended by all amendments that commenced on or before 21 March 1997]

**An Act about road management and other purposes related to
transport**

CHAPTER 1—PRELIMINARY

Short title

1. This Act may be cited as the *Transport Operations (Road Use Management) Act 1995*.

Objectives

3.(1) The overall objectives of this Act are, consistent with the objectives of the *Transport Planning and Coordination Act 1994*, to—

- (a) provide for the effective and efficient management of road use in the State; and
- (b) provide a scheme for managing the use of the State's roads that will—
 - (i) promote the effective and efficient movement of people, goods and services; and
 - (ii) contribute to the strategic management of road infrastructure in ways consistent with the *Transport Infrastructure Act 1994*; and
 - (iii) improve road safety and the environmental impact of road

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use in ways that contribute to overall transport effectiveness and efficiency; and

- (iv) support a reasonable level of community access and mobility in support of government social justice objectives.

(2) This Act establishes a scheme to allow—

- (a) identification of vehicles, drivers and other road users; and
- (b) establishment of performance standards for vehicles, drivers and other road users; and
- (c) establishment of rules for on-road behaviour; and
- (d) monitoring of compliance with this Act, including by using alternative compliance schemes; and
- (e) management of non-performing vehicles, drivers and other road users; and
- (f) control of access to the road network, or parts of the road network, for vehicles, drivers and other road users; and
- (g) management of traffic to enhance safety and transport efficiency.

Achieving an appropriate balance between safety and cost

4.(1) Although it may be possible to regulate to achieve the highest level of safety, doing so would ignore the impact of the regulation on the effectiveness and efficiency of road use.

(2) Therefore, this Act acknowledges the need to achieve an appropriate balance between safety, and the costs that regulation imposes on road users and the community.

Definitions—the dictionary

5.(1) A dictionary in schedule 3 defines particular words used in this Act.¹

¹ In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14.

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(2) Definitions found elsewhere in the Act are signposted in the dictionary.²

Act binds everyone, including government entities

6.(1) In this section—

“government entity” includes—

- (a) the State, the Commonwealth or another State; or
- (b) an instrumentality or agent of the State, the Commonwealth or another State.

(2) This Act binds everyone, including every government entity.

(3) However, a regulation may exempt a government entity from this Act or a provision of this Act.

CHAPTER 2—RESPONSIBILITIES FOR ROAD USE MANAGEMENT STRATEGIES AND PROGRAMS

PART 1—ROAD USE MANAGEMENT STRATEGIES

Development of strategies

7.(1) The chief executive must, from time to time, develop for the Minister’s approval a road use management strategy designed to give effect to the transport coordination plan in accordance with this Act’s objectives.

² The signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Act and tell the reader where the section definitions can be found. For example, the definition “performance standard” see section 15, tells the reader that the term “performance standard” is defined in section 15.

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(2) In developing a road use management strategy, the chief executive must take reasonable steps to engage in public consultation.

(3) The Minister may, at any time, direct the chief executive—

- (a) to prepare a new road use management strategy for the Minister's approval; or
- (b) to amend a road use management strategy.

(4) The Minister may—

- (a) approve a road use management strategy submitted for approval; or
- (b) require the chief executive to amend a road use management strategy submitted for approval.

Contents of strategies

8.(1) A road use management strategy must include—

- (a) a statement of the specific objectives to be achieved; and
- (b) road use management initiatives; and
- (c) criteria for deciding priorities for government spending on road use management initiatives; and
- (d) appropriate performance indicators for deciding whether, and to what extent, the strategy's objectives have been achieved.

(2) A road use management strategy must aim to provide an adequate framework for coordinating and integrating road use management policies as between the different transport modes and levels of government.

(3) A road use management strategy may also take into account agreements about transport between the State and the Commonwealth, a local government or another State.

(4) A road use management strategy for the SEQTA area under the *Transport Planning and Coordination Act 1994* must not be inconsistent with, and must give effect to any integrated regional transport plan in force for the area.

Tabling of strategies

9. The Minister must table a copy of each road use management strategy, and each amendment of a road use management strategy, approved by the Minister in the Legislative Assembly within 5 sitting days after it is approved.

PART 2—ROAD USE IMPLEMENTATION PROGRAMS

Development of programs

10.(1) Before the start of each financial year, the chief executive must develop, for the Minister's approval, a road use implementation program for the year and for 1 or more later years.

(2) A road use implementation program must include—

- (a) a statement of the policies, projects and financial provisions for implementing the road use management strategy; and
- (b) a statement of the performance targets to be achieved.

(3) A road use implementation program may include a proposal to spend an amount not directly related to road use, if the proposal would contribute to the effectiveness and efficiency of road use management.

(4) In developing a road use implementation program, the chief executive must take reasonable steps to engage in public consultation.

(5) A road use implementation program must be made available to the public in the way decided by the Minister.

(6) The Minister may, at any time, direct the chief executive to amend a road use implementation program.

(7) The Minister may—

- (a) approve a road use implementation program submitted for approval; or

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- (b) require the chief executive to amend a road use implementation program submitted for approval.

Consistency with strategies

11.(1) Subject to the Minister's directions, a road use implementation program must be consistent with a road use management strategy.

(2) If the Minister's directions result in a road use implementation program being inconsistent with a road use management strategy, the Minister must table a copy of the directions in the Legislative Assembly within 5 sitting days after they are given.

Report on operation of programs

12. Each annual report of the department must include a report on the implementation of the road use implementation program during the year of the report.

PART 3—GUIDELINES

Guidelines

13.(1) This section applies to the Minister and chief executive in developing and implementing policies about road use management, and in exercising powers under this Act.

- (2) The Minister and chief executive must endeavour to—
- (a) achieve an appropriate balance between safety, and the costs that regulation imposes on road users and the community; and
 - (b) establish the benefits and costs of policy alternatives; and
 - (c) take account of national and international benchmarks and best practice; and
 - (d) promote efficiency, affordable quality and cost-effectiveness; and

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- (e) ensure competition is not unjustifiably restricted; and
- (f) ensure accountability for, and transparency of, decisions affecting road use.

(3) Each annual report of the department must include a report on how effect has been given to this section during the year of the report.

PART 4—OBJECTIVES

Objectives

14.(1) The following objectives are, as far as practicable, to be applied by anyone wanting to encourage a high level of road user performance and compliance with this Act—

- (a) information about their obligations under this Act should be made available to road users;
- (b) voluntary compliance should be sought in preference to enforcement;
- (c) enforcement should be aimed primarily at deterring noncompliance by road users;
- (d) enforcement strategies should, accordingly, try to increase road users' perceptions of the risk of being detected if they offend;
- (e) measures aimed at encouraging compliance should—
 - (i) target the road users who are least likely to comply with this Act; and
 - (ii) try to avoid imposing costs on the road users who are likely to comply voluntarily;
- (f) appropriate alternative compliance schemes should be used as a way of demonstrating compliance.

(2) Preventing the continued commission of offences and imposing appropriate penalties should be seen as objectives that support the other objectives in subsection (1).

CHAPTER 3—ROAD USER PERFORMANCE AND COMPLIANCE

PART 1—ALTERNATIVE COMPLIANCE

Alternative ways of complying with Act

15.(1) In this part—

“alternative compliance scheme” means a way of demonstrating that vehicles operated by a person, or drivers of vehicles operated by a person, achieve and maintain at least a performance standard other than by directly complying with provisions of this Act.

“performance standard” means a provision of this Act that—

- (a) imposes an obligation to achieve a particular outcome; and
- (b) is identified under a regulation as a performance standard.

(2) A person who operates a vehicle (an **“operator”**) may apply in writing to the chief executive for approval of an alternative compliance scheme for a performance standard.

(3) The chief executive may approve the scheme by written notice to the operator.

(4) The approval must specify—

- (a) the performance standard; and
- (b) the provisions of this Act that are not to apply to the operator’s vehicles or drivers.

(5) The approval may be given on conditions stated in it and operates for the period stated in it.

(6) The chief executive may approve a scheme only if satisfied it provides an effective way of demonstrating the operator’s vehicles or drivers operating under it in Queensland achieve and maintain at least the performance standard.

Approving alternative compliance schemes operating interstate

16.(1) In this section—

“interstate scheme” means an alternative compliance scheme approved under a corresponding law to this chapter for an operator.

(2) The chief executive may approve an interstate scheme for Queensland only if satisfied it provides an effective way of demonstrating the operator’s vehicles or drivers operating under it in Queensland achieve and maintain at least the performance standard to which it applies.

(3) The approval must specify—

- (a) the performance standard; and
- (b) the provisions of this Act that are not to apply to the operator’s vehicles or drivers.

(4) The approval may be subject to conditions stated in it and operates for the period stated in it.

Specified provisions of Act do not apply while scheme complied with

17. While—

- (a) an approval of an alternative compliance scheme is in force under this Act for an operator; and
- (b) the operator complies with the scheme, including the conditions of its approval;

the provisions of this Act specified in the scheme do not apply to the operator’s vehicles or drivers as provided under the scheme.

Grounds for amending, suspending or cancelling approvals

18. Each of the following is a ground for amending, suspending or cancelling the approval of an alternative compliance scheme—

- (a) the approval was obtained because of incorrect or misleading information, whether the information was given for the approval or the approval of an alternative compliance scheme under a corresponding law;

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- (b) the operator has contravened a condition of the approval;
- (c) the operator has committed an offence against this Act or a corresponding law;
- (d) the scheme is not, or is no longer, an effective way of demonstrating the operator's vehicles or drivers operating under it in Queensland achieve and maintain at least the relevant performance standard;
- (e) for an interstate scheme—the approval under a corresponding law to this chapter is amended, suspended or cancelled.

Procedure for amending, suspending or cancelling approvals

19.(1) If the chief executive considers a ground exists to amend, suspend or cancel an approval (the “**proposed action**”), the chief executive must give the operator written notice—

- (a) stating the proposed action; and
- (b) stating the ground for the proposed action; and
- (c) outlining the facts and circumstances forming the basis for the ground; and
- (d) if the proposed action is to amend the approval (including a condition of the approval)—stating the proposed amendment; and
- (e) if the proposed action is to suspend the approval—stating the proposed suspension period; and
- (f) inviting the operator to show (within a stated time of at least 28 days) why the proposed action should not be taken.

(2) If, after considering all written representations made within the stated time, the chief executive still considers a ground exists to take the proposed action, the chief executive may—

- (a) if the proposed action was to amend the approval—amend the approval; or
- (b) if the proposed action was to suspend the approval—suspend the approval for no longer than the period stated in the notice; or

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(c) if the proposed action was to cancel the approval—amend the approval, suspend the approval for a period or cancel it.

(3) The chief executive must inform the operator of the decision by written notice.

(4) If the chief executive decides to amend, suspend or cancel the approval, the notice must state—

- (a) the reasons for the decision; and
- (b) that the holder may apply within 28 days for the decision to be reviewed; and
- (c) how the holder may apply for the review; and
- (d) that the holder may apply for a stay of the decision if the person applies for a review.

(5) The decision takes effect on the later of the following—

- (a) the day the notice is given to the holder;
- (b) the day stated in the notice.

(6) However, despite subsection (1), if the chief executive considers it necessary in the public interest, the chief executive may, by written notice given to the operator, immediately suspend the approval until the earliest of the following—

- (a) the chief executive informs the operator of the chief executive's decision by notice under subsection (3), given after complying with subsections (1) and (2);
- (b) the end of 56 days after the notice is given to the holder.

(7) If the chief executive immediately suspends the approval, the notice must state—

- (a) the reasons for the decision; and
- (b) that the holder may apply within 28 days for the decision to be reviewed; and
- (c) how the holder may apply for the review; and
- (d) that the holder may apply for a stay of the decision if the person applies for a review.

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(8) Subsections (1) to (7) do not apply—

(a) if the chief executive proposes to amend the approval only—

(i) for a formal or clerical reason; or

(ii) in another way that does not adversely affect the operator's interests; or

(b) if the operator asks the chief executive to amend or cancel the approval and the chief executive proposes to give effect to the request.

(9) The chief executive may amend or cancel an approval under subsection (8) by written notice given to the operator.

PART 2—AUTHORISED OFFICERS AND ACCREDITED PERSONS

Appointment of authorised officers

20.(1) Every police officer is an authorised officer.

(2) The chief executive may appoint any of the following persons to be an authorised officer—

(a) officers and employees of the public service;

(b) other persons prescribed under a regulation.

(3) The chief executive may appoint a person as an authorised officer only if satisfied the person has the necessary expertise to be an authorised officer.

Appointment of accredited persons

21.(1) The chief executive may appoint a person to be an accredited person to perform functions prescribed under a regulation only if satisfied the person has the necessary expertise to be an accredited person to perform the functions.

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(2) A regulation may provide for accreditation documents for accredited persons.

Powers

22.(1) An authorised officer or accredited person—

- (a) has the powers given under this or another Act; and
- (b) is subject to the directions of the chief executive or commissioner in exercising the powers.

(2) The powers may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice given by the chief executive or commissioner to the authorised officer or accredited person.

Appointment conditions

23.(1) An authorised officer or accredited person holds office on the conditions stated in the instrument of appointment.

(2) An authorised officer or accredited person—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) if the conditions of appointment provide—ceases holding office on ceasing to hold another office stated in the appointment conditions (the “**main office**”); and
- (c) may resign by signed notice given to the chief executive or commissioner.

(3) However, an authorised officer or accredited person may not resign from the office under this Act (the “**secondary office**”) if a term of employment to the main office requires the officer or person to hold the secondary office.

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Identity cards

24.(1) This section does not apply to an authorised officer who is a police officer.

(2) The chief executive must give each authorised officer an identity card.

(3) The identity card must—

- (a) contain a recent photo of the person; and
- (b) be signed by the person; and
- (c) identify the person as an authorised officer; and
- (d) state an expiry date.

(4) A person who stops being an authorised officer must return the person's identity card to the chief executive as soon as practicable (but within 21 days) after the person stops being an authorised officer, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(5) This section does not prevent the giving of a single identity card to a person for this and other Acts.

Production or display of identity cards

25.(1) This section does not apply to a uniformed police officer.

(2) An authorised officer may exercise as power in relation to a person only if—

- (a) the officer—
 - (i) for an officer who is a police officer—first produces the officer's police identity card for the person's inspection; or
 - (ii) for any other officer—first produces the officer's identity card for the person's inspection; or
- (b) the officer has the officer's identity card displayed so it is clearly visible to the person.

(3) However, if for any reason it is not practicable to comply with subsection (2) before exercising the power, the officer must produce the identity card as soon as it is practicable.

PART 3—POWERS OF AUTHORISED OFFICERS

Division 1—Powers for places

Entry to places

26.(1) An authorised officer may enter a place if—

- (a) its occupier consents to the entry; or
- (b) the entry is authorised by a warrant; or
- (c) it is mentioned in a licence or other document prescribed under a regulation as a place of business, or another place, required to be open to inspection and the entry is made when the place is—
 - (i) open for the conduct of business or otherwise open for entry; or
 - (ii) required under the licence or document to be open for inspection.

(2) An authorised officer, without the occupier’s consent or a warrant, may—

- (a) enter a public place when the place is open to the public; or
- (b) enter the land around premises to ask its occupier for consent to enter the premises.

Consent to entry

27.(1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the officer or another officer entering the place.

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- (2) Before asking for the consent, the officer must inform the occupier—
- (a) of the purpose of the entry; and
 - (b) that the occupier is not required to consent.
- (3) If the consent is given, the officer may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state that—
- (a) the occupier was informed—
 - (i) of the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
 - (b) the occupier gives an authorised officer consent to enter the place and exercise powers under this Act; and
 - (c) the time and date the consent was given.
- (5) If the occupier signs an acknowledgment of consent, the officer must immediately give a copy to the occupier.
- (6) Subsection (7) applies to a court if—
- (a) a question arises, in a proceeding in or before the court, whether the occupier of a place consented to an authorised officer entering the place under this Act; and
 - (b) an acknowledgment under this section is not produced in evidence for the entry; and
 - (c) it is not proved that the occupier consented to the entry.
- (7) The court may presume that the occupier did not consent.

Warrants to enter

28.(1) An authorised officer may apply to a magistrate for a warrant to enter a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the officer gives the magistrate all the information the magistrate requires about the

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application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against a transport Act; and
- (b) the evidence is, or may be within the next 7 days, at the place.

(5) The warrant must state—

- (a) that an authorised officer may, with necessary and reasonable help and force, enter the place and exercise the officer’s powers under this Act; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours when the place may be entered; and
- (e) the date, within 7 days after the warrant’s issue, the warrant ends.

Warrants—applications made other than in person

29.(1) An authorised officer may apply for a warrant by phone, fax, radio or another form of communication if the officer considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the officer’s remote location.

(2) Before applying for the warrant, the officer must prepare an application stating the grounds on which the warrant is sought.

(3) The officer may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the officer if it is reasonably practicable to fax a copy.

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(5) If it is not reasonably practicable to fax a copy to the officer—

- (a) the magistrate must—
 - (i) tell the officer what the terms of the warrant are; and
 - (ii) tell the officer the date and time the warrant was issued; and
- (b) the officer must complete a form of warrant (“**warrant form**”) and write on it—
 - (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant’s terms.

(6) The facsimile warrant, or the warrant form properly completed by the officer, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.

(7) The officer must, at the first reasonable opportunity, send the magistrate—

- (a) the sworn application; and
- (b) if the officer completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) Subsection (10) applies to a court if—

- (a) a question arises, in a proceeding in or before the court, whether a power exercised by an authorised officer was not authorised by a warrant issued under this section; and
- (b) the warrant is not produced in evidence.

(10) The court must presume that the exercise of the power was not authorised by a warrant issued under this section, unless the contrary is proved.

General powers after entering places

30.(1) This section applies to an authorised officer who enters a place

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with the occupier's consent or a warrant.

(2) The officer may, for monitoring or enforcing compliance with this Act—

- (a) search any part of the place; or
- (b) inspect, measure, test, photograph or film the place or anything in the place; or
- (c) take samples of anything in the place; or
- (d) copy a document in the place; or
- (e) take the persons, equipment and materials the officer reasonably requires for exercising a power under this Act into the place; or
- (f) require a person in the place to give the officer reasonable help to exercise the powers mentioned in paragraphs (a) to (e).

(3) A person must comply with a requirement under subsection (2)(f), unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(4) A requirement under subsection (2)(f) does not include a requirement to produce a document or give information.³

Division 2—Powers for vehicles

Power to stop private vehicles

31.(1) A police officer may require the person in control of a private vehicle to stop the vehicle to check whether the vehicle or person is complying with a transport Act.

(2) An authorised officer, who is not a police officer, may require the person in control of a private vehicle to stop the vehicle—

³ For the power to require documents to be produced see section 49. For the power to require information see section 50.

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- (a) at a checkpoint—only if the vehicle is a type of vehicle that the officer is stopping at the checkpoint by reference to objective criteria that are part of a program approved under section 47;⁴ or
- (b) if the officer reasonably believes the vehicle does not comply with a transport Act.

(3) A requirement may be made under subsection (1) or (2) in a way prescribed under a regulation.

(4) A person must comply with a requirement under subsection (1) or (2), unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

Example of a reasonable excuse—

It is a reasonable excuse for a person not to comply with a requirement if—

- (a) the person reasonably believes that to immediately comply would endanger the person or someone else; and
- (b) the person complies with the requirement at the first reasonable opportunity.

(5) A regulation may impose restrictions on the stopping of private vehicles by authorised officers who are not police officers, including restrictions on stopping private vehicles at night.

Power to stop heavy vehicles

32.(1) An authorised officer may require the person in control of a heavy vehicle to stop the vehicle to check whether the vehicle or person is complying with a transport Act.

(2) The requirement may be made in a way prescribed under a regulation.

(3) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—120 penalty units.

⁴ Section 47 (Power to set up checkpoints)

Power to require vehicles to be moved

33.(1) This section applies to a motor vehicle that is stationary on a road or has been stopped under section 31 or 32.⁵

(2) To enable an authorised officer to exercise a power under a transport Act, the officer may require the person in control of the vehicle to move to a stated reasonable place.

Example—

The officer may require the person to move the vehicle onto a weighing or testing device.

(3) However, the place must not be more than—

(a) for a private vehicle—5 km from where the vehicle was stopped;
or

(b) for a heavy vehicle—25 km from where the vehicle was stopped.

(4) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—

(a) for a private vehicle—60 penalty units; or

(b) for a heavy vehicle—120 penalty units.

(5) For a heavy vehicle, if the person does not comply with the requirement, the officer may move the vehicle to the required place.

Power to inspect vehicles

34.(1) This section applies to a motor vehicle that is stationary on a road or has been stopped under section 31 or 32.⁶

(2) To check whether the vehicle complies with a transport Act, an authorised officer may inspect or test it.

⁵ Section 31 (Power to stop private vehicles)
Section 32 (Power to stop heavy vehicles)

⁶ Section 31 (Power to stop private vehicles)
Section 32 (Power to stop heavy vehicles)

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(3) To enable the officer to inspect or test the vehicle, the officer may do anything reasonable to be done for the inspection or test.

Examples of what may be reasonable for an inspection or test—

The officer may—

- (a) enter the vehicle; or
- (b) unlock, unfasten, open or remove any part of it; or
- (c) move its load.

(4) To avoid any doubt, the officer does not have the powers mentioned in section 35.⁷

Power to enter vehicles etc. other than for vehicle inspection

35.(1) This section applies to an authorised officer who reasonably believes—

- (a) a vehicle is being, or has just been, used to commit an offence against a transport Act; or
- (b) a vehicle, or a thing in the vehicle, may provide evidence of an offence against a transport Act that is being, or has just been, committed.

(2) The officer may, for enforcing a transport Act—

- (a) enter the vehicle, using necessary and reasonable help and force;⁸ or
- (b) search any part of the vehicle; or
- (c) inspect, measure, test, photograph or film the vehicle or anything in the vehicle; or
- (d) take samples of the vehicle or anything in the vehicle; or
- (e) copy a document in the vehicle; or

⁷ Section 35 (Power to enter vehicles etc. other than for vehicle inspection)

⁸ In addition, to enable the vehicle to be entered, the officer may stop the vehicle under section 31 (Power to stop private vehicles) or 32 (Power to stop heavy vehicles).

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- (f) move the vehicle's load; or
- (g) take the persons, equipment and materials the officer reasonably requires into the vehicle.

(3) An authorised officer may not exercise the powers under subsection (2) in relation to the following things found in a vehicle—

- (a) a personal possession;
- (b) for a private vehicle—a document that is not issued, or required to be kept, under a transport Act or a corresponding law.

Power to require vehicle inspections

36.(1) If an authorised officer reasonably believes a vehicle may not comply with this Act, the officer may require its owner to have it inspected at a stated reasonable time and place.

(2) The requirement—

- (a) must be made by notice in the approved form; or
- (b) if for any reason it is not practicable to give the notice—may be made orally and confirmed by notice in the approved form as soon as practicable.

(3) A person must comply with a requirement under subsection (1), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—60 penalty units.

Power to prohibit use of vehicles

37.(1) If an authorised officer reasonably believes a vehicle is unsafe, the officer may, by notice in the approved form, require its owner not to use it, or permit it to be used, on a road until—

- (a) it is inspected at a stated reasonable place and found to comply with this Act; or
- (b) stated reasonable action is taken in relation to the vehicle to ensure it complies with this Act.

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Examples of action that may be reasonable under paragraph (b)—

1. The vehicle's load be adjusted or moved.
2. Stated repairs be carried out to the vehicle and the vehicle be inspected at a stated place and found to comply with this Act.

(2) A person must not contravene, or attempt to contravene, a requirement under subsection (1), unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—

- (a) for a private vehicle—60 penalty units; and
- (b) for a heavy vehicle—120 penalty units.

Power to prohibit persons driving

38.(1) This section applies to the driver of a motor vehicle that is stationary on a road or has been stopped under section 31 or 32.⁹

(2) If an authorised officer reasonably believes the driver would contravene this Act by driving a vehicle, the officer may, by notice in the approved form, require the driver not to drive a vehicle in contravention of this Act.

(3) A person must not contravene, or attempt to contravene, a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—

- (a) for a private vehicle—60 penalty units; and
- (b) for a heavy vehicle—120 penalty units.

Powers to enable effective and safe exercise of other powers

39.(1) An authorised officer may require the person in control of a vehicle to give the officer reasonable help to enable the officer to effectively

⁹ Section 31 (Power to stop private vehicles)
Section 32 (Power to stop heavy vehicles)

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exercise a power under this Act in relation to the vehicle.

Examples of requirements for effectively exercising powers—

1. Requiring the vehicle to be held stationary on a weighing device to enable the vehicle to be weighed.

2. Requiring the vehicle's bonnet to be opened to enable the engine to be inspected.

(2) An authorised officer may require the person in control of a vehicle, or a person who is in or just left the vehicle, to do or not to do anything the officer reasonably believes is necessary—

(a) to enable the officer to safely exercise a power under a transport Act in relation to the vehicle; or

(b) to preserve the safety of the officer, the person or other persons.

Examples of safety requirements—

1. Requiring the persons in a vehicle to get out of the vehicle while the officer inspects the vehicle's undercarriage.

2. Requiring a person who has just left the vehicle to stand back from the carriageway of the road.

3. Requiring a person to remain in control of a vehicle for a reasonable time.

(3) A person must comply with a requirement under subsection (1) or (2), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—

(a) for a private vehicle—60 penalty units; or

(b) for a heavy vehicle—120 penalty units.

Division 3—Power to seize evidence

Power to seize evidence

40.(1) An authorised officer who enters a place under this part with the occupier's consent may seize a thing in the place if—

(a) the officer reasonably believes the thing is evidence of an offence against a transport Act; and

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(b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(2) An authorised officer who enters a place under this part with a warrant may seize the evidence for which the warrant was issued.

(3) An authorised officer may also seize anything else in a place mentioned in subsection (1) or (2) if the officer reasonably believes—

- (a) the thing is evidence of an offence against a transport Act; and
- (b) the seizure is necessary to prevent the thing being hidden, lost, destroyed or used to continue or repeat the offence.

(4) An authorised officer who enters a vehicle under this part may seize anything in the vehicle if the officer reasonably believes the thing is evidence of an offence against a transport Act.

Powers supporting seizure

41.(1) Having seized a thing under this division, an authorised officer may—

- (a) move the thing from the place or vehicle where it was seized (the “**place of seizure**”); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

Examples of restricting access to a thing—

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

(2) If an authorised officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with it without an authorised officer's approval.

Maximum penalty—60 penalty units.

(3) To enable a thing to be seized, an authorised officer may require the person in control of it to take it to a stated reasonable place by a stated reasonable time.

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(4) The requirement—

- (a) must be made by notice in the approved form; or
- (b) if for any reason it is not practicable to give the notice—may be made orally and confirmed by notice in the approved form as soon as practicable.

(5) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

Receipt for seized things

42.(1) As soon as practicable after an authorised officer seizes a thing, the officer must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the officer must leave the receipt at the place of seizure, in a reasonably secure way and in a conspicuous position.

(3) An authorised officer need not give a receipt for a seized thing if—

- (a) the thing is unattended when seized; and
- (b) the officer does not know who the owner of the thing is; and
- (c) the officer cannot find the owner after making reasonable inquiries (given the thing's value).

(4) The receipt must generally describe each thing seized and its condition.

Forfeiture of seized things

43.(1) A seized thing is forfeited to the State if the chief executive or commissioner—

- (a) cannot find its owner after making reasonable inquiries (given the thing's value); or
- (b) is unable, after making reasonable efforts, to return it to its owner;
or

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- (c) reasonably believes—
- (i) possession of the thing is an offence against a transport Act; or
 - (ii) it is necessary to keep the thing to prevent it being used to commit an offence against a transport Act; or
 - (iii) the thing does not comply with a transport Act and cannot be repaired or otherwise changed to comply with a transport Act; or
 - (iv) the thing is inherently unsafe.

(2) If the chief executive or commissioner decides to forfeit a thing under subsection (1)(c), the chief executive or commissioner must inform the owner of the thing of the decision by written notice.

(3) Subsection (2) does not apply if the chief executive or commissioner cannot find the owner after making reasonable inquiries (given the thing's value).

(4) The notice must state—

- (a) the reasons for the decision; and
- (b) that the owner may apply within 28 days for the decision to be reviewed; and
- (c) how the owner may apply for the review; and
- (d) that the owner may apply for a stay of the decision if the owner applies for a review.

Dealing with forfeited things

44.(1) On the forfeiture of a thing—

- (a) it becomes the State's property; and
- (b) it may be dealt with as the chief executive or commissioner considers appropriate.

(2) The chief executive or commissioner must not deal with the thing until any review of, or appeal against, the decision to forfeit the thing is decided.

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Access to seized things

45. Until a seized thing is forfeited or returned, an authorised officer must allow its owner—

- (a) to inspect it; or
- (b) if it is a document—to copy it.

Return of seized things

46.(1) If a seized thing has not been forfeited, the chief executive or commissioner must return it to its owner at the end of—

- (a) 6 months; or
- (b) if a proceeding for an offence involving it is started within the 6 months—the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), the authorised officer must return the seized thing to its owner immediately the officer stops being satisfied its retention as evidence is necessary.

Division 4—General powers

Power to set up checkpoints

47.(1) The chief executive may approve a program under which authorised officers may set up checkpoints to inspect motor vehicles to ensure the vehicles comply with a transport Act.

(2) Under an approved program, an authorised officer may set up a checkpoint on a road, or elsewhere with its occupier's consent.

Power to require name and address

48.(1) This section applies if—

- (a) an authorised officer finds a person committing an offence against a transport Act; or
- (b) an authorised officer finds a person in circumstances that lead, or

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has information that leads, the officer to suspect, on reasonable grounds, the person has just committed an offence against a transport Act; or

- (c) for an authorised officer who is a police officer—a vehicle is stationary on a road or has been stopped under section 31 or 32;¹⁰ or
- (d) for an authorised officer who is not a police officer—a vehicle is stationary on a road or has been stopped under section 32.¹¹

(2) The officer may require the following person to state the person's name and address—

- (a) for paragraph (a) or (b)—the person mentioned in the paragraph;
- (b) for paragraph (c) or (d)—the person in control of the vehicle mentioned in the paragraph.

(3) When making the requirement, the officer must warn the person it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

(4) The officer may require the person to give evidence of the correctness of the stated name or address if the officer suspects, on reasonable grounds, the stated name or address is false.

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(6) A person does not commit an offence against subsection (5) if—

- (a) the person was required to state the person's name and address by an authorised officer who suspected the person had committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

¹⁰ Section 31 (Power to stop private vehicles)
Section 32 (Power to stop heavy vehicles)

¹¹ Section 32 (Power to stop heavy vehicles)

Power to require documents to be produced

49. An authorised officer may require a person to produce for inspection a document issued, or required to be kept, under a transport Act or a corresponding law.

(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(3) The officer may keep the document to make a note on it or copy it.

(4) If the officer copies it, the officer may require the person responsible for keeping the document to certify the copy as a true copy of the document.

(5) The person must certify the copy, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(6) The officer must return the document to the person as soon as practicable after making the note or copying it.

Power to require information

50.(1) In this section—

“**information offence**” means an offence against a transport Act that—

- (a) involves a heavy vehicle; and
- (b) is declared under a regulation to be an information offence.

(2) This section applies if an authorised officer reasonably believes—

- (a) an information offence has been committed; and
- (b) a person may be able to give information about the offence.

(3) The officer may require the person to give information about the offence.

(4) When making the requirement, the officer must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.

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(5) The person must give the information, unless the person has a reasonable excuse.

Maximum penalty—120 penalty units.

(6) It is a reasonable excuse for an individual to fail to give the information if giving the information might tend to incriminate the individual.

PART 4—ADDITIONAL POWERS OF POLICE OFFICERS

Power of arrest

51.(1) A police officer may arrest a person if—

- (a) the officer—
 - (i) finds a person committing an offence against a section mentioned in subsection (2); or
 - (ii) finds a person in circumstances that lead, or has information that leads, the officer to suspect, on reasonable grounds, the person has just committed an offence against a section mentioned in subsection (2); and
- (b) the officer reasonably believes proceedings by way of complaint and summons against the person would be ineffective.

(2) The sections are—

- section 31 (Power to stop private vehicles)
- section 32 (Power to stop heavy vehicles)
- section 33 (Power to require vehicles to be moved)
- section 37 (Power to prohibit use of vehicles)
- section 38 (Power to prohibit persons driving)
- section 48 (Power to require name and address)

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- section 50 (Power to require information)
- section 52 (False or misleading statements)
- section 53 (False, misleading or incomplete documents)
- section 54 (Obstructing authorised officers or accredited persons)
- section 55 (Impersonating authorised officers or accredited persons).

(3) This section does not limit the powers a police officer has as an authorised officer.

PART 5—LEGAL PROCEEDINGS

Division 1—Offences

False or misleading statements

52.(1) In this section—

“**official**” means the chief executive, the commissioner, an authorised officer or an accredited person.

(2) A person must not—

- (a) state anything to an official for a transport Act that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an official for a transport Act anything without which the statement is, to the person’s knowledge, misleading in a material particular.

Maximum penalty—60 penalty units.

(3) It is enough for a complaint against a person for an offence against subsection (2) to state that the statement made was false or misleading to the person’s knowledge.

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False, misleading or incomplete documents

53.(1) In this section—

“**official**” means the chief executive, the commissioner, an authorised officer or an accredited person.

(2) A person must not give, for a transport Act, an official a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—60 penalty units.

(3) Subsection (2) does not apply to a person if the person, when giving the document—

- (a) informs the official, to the best of the person’s ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(4) It is enough for a complaint against a person for an offence against subsection (1) to state that the information given was false, misleading or incomplete to the person’s knowledge.

Obstructing authorised officers or accredited persons

54.(1) In this section—

“**obstruct**” includes hinder, intimidate, resist or threaten.

(2) A person must not obstruct an authorised officer or accredited person in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

Impersonating authorised officers or accredited persons

55. A person must not pretend to be an authorised officer or accredited person.

Maximum penalty—60 penalty units.

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Using documents voided for non-payment

56.(1) This section applies to a person (the “**applicant**”) who pays the fee for a licence or other document under a transport Act by cheque or other method of payment.

(2) If the cheque or payment is not honoured on presentation or is later dishonoured—

- (a) the licence or document is void from the day it was issued; and
- (b) the applicant must, on demand by the chief executive or commissioner, immediately give the licence or document to the department or a police officer.

(3) If, after the demand—

- (a) the applicant fails to immediately give the licence or document to the department or a police officer; or
- (b) uses, continues to use, or allows someone else to use, the licence or document; or
- (c) a person other than the applicant (the “**other person**”) uses, continues to use, or allows someone else to use, the licence or document;

the applicant and the other person commit an offence.

Maximum penalty—60 penalty units.

(4) It is a defence for the other person to prove he or she did not know a demand had been made under subsection (2)(b).

(5) If the State incurs expense because a cheque or payment is not honoured or is later dishonoured—

- (a) the applicant must reimburse the expense; and
- (b) the amount of the expense may be recovered as a debt payable by the applicant to the State.

Liability for offences

57.(1) In this section—

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“liability offence” means an offence against a transport Act that—

- (a) involves a heavy vehicle; and
- (b) is declared under a regulation to be a liability offence.

(2) If the driver, or other person in control, of a heavy vehicle commits a liability offence, the following persons are also taken to have committed the offence—

- (a) the owner of the vehicle;
- (b) if someone else controls or directly influences the loading or operation of the vehicle—the other person.

(3) It is a defence for the owner or other person to prove he or she took reasonable precautions and exercised appropriate diligence to avoid the conduct alleged to constitute the offence.

Division 2—Evidence and procedure

Proof of appointments unnecessary

58. For a transport Act, it is not necessary to prove the appointment of the following persons—

- (a) the chief executive;
- (b) the commissioner;
- (c) an authorised officer;
- (d) an accredited person;
- (e) a police officer.

Proof of signatures unnecessary

59. For a transport Act, a signature purporting to be the signature of 1 of the following persons is evidence of the signature it purports to be—

- (a) the chief executive;
- (b) the commissioner;

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- (c) an authorised officer;
- (d) an accredited person;
- (e) a police officer.

Evidentiary aids

60.(1) In this section—

“certificate” means a certificate purporting to be signed by the chief executive or commissioner.

(2) A certificate stating any of the following matters is evidence of the matter—

- (a) a specified place was within a specified type of area declared under a transport Act;
- (b) a specified licence or other document under a transport Act or a corresponding law was or was not in force in relation to a specified person or vehicle;
- (c) a specified place was or was not a road;
- (d) a specified person was or was not registered as the owner of a specified vehicle;
- (e) a specified thing was State or local government property;
- (f) a specified sign—
 - (i) was or was not an official traffic sign; or
 - (ii) contained specified words; or
 - (iii) was on a specified place;
- (g) specified particulars of a specified conviction, disqualification, suspension, cancellation or licence or other condition under a transport Act or a corresponding law;
- (h) a specified vehicle was or was not inspected;
- (i) a specified vehicle was or was not inspected in accordance with a specified requirement of an authorised officer;
- (j) the results of a specified vehicle inspection;

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- (k) a specified fee under a transport Act was or was not paid by a specified person;
- (l) a specified application under a transport Act was or was not received;
- (m) a specified vehicle was or was not of a specified type or was carrying specified goods;
- (n) the contents of a specified substance that was tested by a specified analyst;
- (o) that a specified copy of a licence or other document was a copy of a licence or other document issued, or required to be kept, under a transport Act or a corresponding law.

(3) A certificate—

- (a) may relate to a specified time or period; and
- (b) if it is issued for a particular period—has the effect mentioned in subsection (1) for the entire period.

(4) A regulation may provide for evidence of other matters to be provided by a certificate.

(5) A document, or a copy of a document, purporting to be made or given by a person under a transport Act containing personal particulars given by the person is evidence of the particulars.

(6) Anything recorded by a photographic, mechanical, electronic or other device under a transport Act is evidence—

- (a) that the recording was made; and
- (b) of the accuracy of the recording; and
- (c) of the matters stated in the recording; and
- (d) of matters prescribed under a regulation.

(7) Evidence by an authorised officer of the contents of a document issued, required to be kept, under a transport Act or a corresponding law, that was examined by the officer while in someone else's possession, may be given by the officer without the document being produced.

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Example of subsection (7)—

An authorised officer who examines a driver's log book may return the log book to the driver to enable the driver to continue driving. The officer may give evidence of the contents of the log book without producing it.

Instruments

61.(1) In this section—

“instrument” means an instrument declared under a regulation to be an instrument for this section, and includes—

- (a) a speedometer; and
- (b) a breath analysing instrument; and
- (c) a weighing device.

(2) A certificate stating that, on a specified day or at a specified time on a specified day, a specified instrument—

- (a) was in a proper condition; or
- (b) had a specified level of accuracy;

is evidence of those matters on the specified day or at the specified time, and for any period, prescribed under a regulation, after that day.

(3) Evidence of the condition of the instrument, or the way in which it was operated, is not required unless evidence that the instrument was not in proper condition or was not properly operated has been given.

(4) A defendant who intends to challenge the condition of an instrument, or the way in which it was operated, must give the complainant or arresting police officer (if any) notice, in the approved form, of the intention to challenge.

(5) The notice must be given at least 3 working days before the return date of the summons or the appointed date for the hearing of the charge.

Proceedings for offences

62.(1) A proceeding for an offence against a transport Act is a summary proceeding under the *Justices Act 1886*.

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(2) The proceeding must start—

- (a) within 1 year after the offence was committed; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence was committed.

PART 6—GENERAL

Notice of damage

63.(1) This section applies if—

- (a) an authorised officer damages anything when exercising or purporting to exercise a power under a transport Act; or
- (b) a person acting under the direction of an authorised officer damages anything.

(2) The officer must promptly give written notice of particulars of the damage to the person who appears to be the owner of the thing.

(3) If the officer believes the damage was caused by a latent defect in the thing or circumstances beyond the officer's control, the officer may state it in the notice.

(4) If, for any reason, it is not practicable to comply with subsection (2), the officer must leave the notice where the damage happened, in a reasonably secure way and in a conspicuous position.

(5) This section does not apply to damage the officer reasonably believes is trivial.

Compensation

64.(1) This section does not apply to the exercise of a power (including the making of a requirement) to which section 31(2)(a)¹² applies.

¹² Section 31 (Power to stop private vehicles)

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(2) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under a transport Act, including, for example, in complying with a requirement made of the person.

(3) Compensation may be claimed and ordered in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the compensation; or
- (b) for an offence against this Act brought against the person claiming compensation.

(4) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.

(5) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

CHAPTER 4—REVIEW OF AND APPEALS AGAINST DECISIONS

PART 1—REVIEW OF DECISIONS

Who may apply for review

65.(1) A person whose interests are affected by a decision under section 15, 16, 18 or 43¹³ may apply to the person who made the decision for the decision to be reviewed.

(2) The person has a right to receive a statement of the reasons for the decision.

¹³ Section 15 (Alternative ways of complying with Act)
Section 16 (Approving alternative compliance schemes operating interstate)
Section 18 (Grounds for amending, suspending or cancelling approvals)
Section 43 (Forfeiture of seized things)

Applying for review

66.(1) A person may apply for the review of a decision only within 28 days after notice of the decision was given to the person.

(2) However, if—

- (a) the notice did not state the reasons for the decision; and
- (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1);

the person may apply within 28 days after the person is given the statement of the reasons.

(3) In addition, the chief executive or commissioner may extend the period for applying.

(4) An application must be written and state in detail the grounds on which the applicant wants the decision to be reviewed.

Stay of operation of decision

67.(1) If a person applies under this part for a decision to be reviewed, the person may immediately apply to a Magistrates Court for a stay of the decision.

(2) The court may stay the decision to secure the effectiveness of the review and any later appeal to the court.

(3) A stay—

- (a) may be given on conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(4) The period of a stay must not extend past the time when the chief executive or commissioner reviews the decision and any later period the court allows the person to appeal against the decision.

(5) A decision, or the carrying out of a decision, is affected by an application made under this part for the decision to be reviewed only if the decision is stayed.

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Reference to review panel

68.(1) If an application is made under this part for a decision to be reviewed, the chief executive must refer the application to a review panel for advice.

(2) However, the chief executive or commissioner need not refer an application to a review panel if the chief executive or commissioner considers the application is frivolous or vexatious.

Review panels

69.(1) The chief executive or commissioner may establish review panels for this part.

(2) A review panel consists of persons nominated by the chief executive or commissioner.

(3) Each review panel must include—

- (a)** at least 1 representative of the department; and
- (b)** if the vehicle involved is a private vehicle—at least 1 representative of the community; and
- (c)** if the vehicle involved is a heavy vehicle—at least 1 representative of the community or transport industry; and
- (d)** at least 1 independent representative.

(4) A review panel may include a representative of the commissioner.

(5) A regulation may make provision about review panels, including, for example, the conduct of their proceedings and the making of recommendations by them.

Consideration of application by review panel

70.(1) If an application made under this part for the review of a decision is referred to a review panel, the panel must give the applicant or the applicant's representative an opportunity to make representations to the panel.

(2) After considering the representations, the review panel must

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recommend to the chief executive or commissioner whether or not the decision should be confirmed or amended or another decision substituted.

Decision on reconsideration

71.(1) After considering the review panel's recommendation, the chief executive or commissioner may confirm or amend the decision or substitute a new decision.

(2) The chief executive or commissioner must immediately give the applicant written notice of the decision.

(3) If the decision is not the decision sought by the applicant, the notice must state—

- (a) the reasons for the decision; and
- (b) that the applicant may appeal against the decision to a specified court within 28 days.

PART 2—APPEALS

Who may appeal

72. A person whose interests are affected by a decision of the chief executive or commissioner under section 71¹⁴ may appeal against the decision to a Magistrates Court.

Appealing

73.(1) A person may appeal against a decision under this part only within 28 days after notice of the decision was given to the person.

(2) However, if—

- (a) the notice did not state the reasons for the decision; and

¹⁴ Section 71 (Decision on reconsideration)

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- (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1);

the person may apply within 28 days after the person is given a statement of the reasons.

- (3) In addition, the court may extend the period for appealing.

(4) The *Transport Planning and Coordination Act 1994*, sections 31 to 35 apply to an appeal.¹⁵

CHAPTER 5—ROAD USE

PART 1—VEHICLE AND ROAD USE FEES

Fees for road use

74.(1) Fees for road use (other than registration fees) must take into account, but must not be more than, the costs of the road use to other road users and the community and the administrative costs involved.

Examples of costs of road use to other road users and the community—

1. Accelerated road wear
2. Costs of ensuring safety
3. Congestion
4. Noise
5. Pollution.

(2) A regulation may prescribe a way of calculating or deciding the costs of road use.

¹⁵ *Transport Planning and Coordination Act 1994*, sections 31 (Starting appeals), 32 (Stay of operation of decisions), 33 (Powers of court on appeal), 34 (Effect of decision of court on appeal) and 35 (Assessors)

PART 2—VEHICLE OPERATIONS

Vehicle operations and road rules

75. A regulation may prescribe rules about the operation of vehicles and use of the road network, including, for example, rules about—

- (a) driver behaviour; and
- (b) loading, unloading and securing loads; and
- (c) keeping and producing records; and
- (d) vehicle mass and dimension; and
- (e) defective vehicles and ways of managing them; and
- (f) the environmental impact of vehicle use; and
- (g) rules for using the road network for vehicles, trains, trams, drivers, cyclists, pedestrians and animals; and
- (h) removing vehicles from the road network if they pose a risk to safety or impede the use of the road network; and
- (i) the recovery of removed vehicles by their owners, and fees for removing and storing the vehicles.

PART 3—VEHICLE MANAGEMENT

Vehicle standards

76. A regulation may prescribe vehicle standards with which vehicles must comply to use the road network.

Identification of vehicles

77. A regulation may—

- (a) prescribe ways of identifying vehicles; and

- (b) require the keeping of a register of the vehicles identified in those ways; and
- (c) provide for the circumstances in which details of the register's contents can be given to someone.

PART 4—DRIVER MANAGEMENT

Regulations about driver management

78. A regulation may prescribe rules about the management of drivers, including, for example—

- (a) standards about driver skills and knowledge; and
- (b) the testing and licensing of drivers; and
- (c) rules about licences, including, in particular, the circumstances in which, and the reasons for which, they can be cancelled or suspended or conditions imposed on them; and
- (d) requiring the keeping of a register of licences; and
- (e) providing for the circumstances in which details of the register's contents can be given to someone; and
- (f) the granting of exemptions from conditions of licences.

Restriction on releasing information from register of licences

79.(1) The chief executive may only release information from the register of licences about a person's personal particulars or driving history to—

- (a) the person; or
- (b) the commissioner; or
- (c) a person who keeps a register of licences under a corresponding law; or
- (d) with the person's written consent—someone else.

(2) Before releasing information under subsection (1)(c), the chief executive must be satisfied the release of information from the register kept under the corresponding law is adequately regulated.

CHAPTER 6—MISCELLANEOUS

Court orders for payment

80.(1) In this section—

“**convicts**” a person includes finds a person guilty, and accepts a plea of guilty from a person, whether or not a conviction is recorded.

(2) If—

- (a) a court convicts a person of an offence against a transport Act; and
- (b) the person owes fees in relation to the offence;

the court may, in addition to or instead of imposing a penalty, order the person to pay an amount of not more than double the amount of the fees.

(3) If—

- (a) a court convicts a person of an offence against a transport Act; and
- (b) in committing the offence, the person caused damage to road transport infrastructure, including, for example, accelerated wear of road pavements or structures through overloading;

the court may, in addition to imposing a penalty, order the person to pay an amount of not more than the cost of the damage.

Special provision for serving documents

81.(1) A document about a vehicle may be given to the vehicle’s owner under a transport Act by securely fixing the document to a part of the vehicle in a way that a driver of the vehicle is likely to notice the document.

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(2) This section does not affect—

- (a) the operation of another law that permits service of a document other than as provided in this section;¹⁶ or
- (b) the power of a court or tribunal to authorise service of a document other than as provided in this section.

Official traffic sign approvals

82.(1) In this section—

“**MUTCD**” means the Manual of Uniform Traffic Control Devices issued by the chief executive.

“**official traffic sign**” means a sign, marking, light or device placed or erected to regulate, warn or guide traffic.

(2) The chief executive may approve the design of, and a method, standard or procedure about, an official traffic sign.

(3) The approved design, method, standard or procedure must be contained in the MUTCD or an approved notice.

(4) The MUTCD or approval notice must be available for purchase or inspection by the public at the department’s head office or the other offices of the department that the chief executive directs.

Protection from liability

83.(1) In this section—

“**official**” means—

- (a) the Minister; and
- (b) the chief executive; and
- (c) the commissioner; and
- (d) an authorised officer; and
- (e) an accredited person; and

¹⁶ See for example *Acts Interpretation Act 1954*, part 10 (Service of documents).

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- (f) a person acting under the direction of an authorised officer; and
- (g) an employee of the department of the police service; and
- (h) the chief executive officer, or an officer or employee, of a local government.

(2) An official is not civilly liable for an act done, or omission made, honestly and without negligence under a transport Act.

(3) If subsection (2) prevents civil liability attaching to an official, the liability attaches instead to—

- (a) for a person mentioned in subsection (1)(a) to (g)—the State; or
- (b) for a person mentioned in subsection (1)(h)—the local government.

Effect of failure to comply with ch 2

84.(1) It is Parliament's intention that chapter 2¹⁷ be complied with.

(2) However—

- (a) chapter 2 is directory only and does not create rights or impose legally enforceable obligations on the State, Minister, chief executive or anyone else; and
- (b) failure to comply with chapter 2 does not affect the validity of anything done or not done under this Act.

(3) In addition, a decision made, or appearing to be made, under chapter 2—

- (a) is final and conclusive; and
- (b) cannot be challenged, appealed against, reviewed, quashed, set aside, or called in question in another way, under the *Judicial Review Act 1991* (whether by the Supreme Court, another court, a tribunal or another entity); and
- (c) is not subject to a writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.

¹⁷ Chapter 2 (Responsibilities for road use management strategies and programs)

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(4) In this section—

“**decision**” includes—

- (a) conduct engaged in to make a decision; and
- (b) conduct related to making a decision; and
- (c) failure to make a decision.

Regulations

85.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made prescribing offences for a contravention of a regulation and fixing a maximum penalty of not more than 80 penalty units for a contravention.

(3) A regulation may—

- (a) prescribe fees payable for a transport Act; or
- (b) allow the chief executive to refund fees completely or partly or provide concessions; or
- (c) prescribe circumstances in which roads may be closed; or
- (d) prescribe offences for misuse of roads; or
- (e) provide for review of and appeals against decisions made under the regulation; or
- (f) require the collection, keeping or production of records; or
- (g) establish requirements for the certification of instruments (within the meaning of section 61¹⁸); or
- (h) exempt a person or vehicle from a provision of this Act.

Example of subsection (3)(d)—

Offences for throwing rocks or other things onto roads.

(4) If the Commonwealth has enacted a law for the scheme to create uniform or consistent national road transport legislation envisaged by the agreements scheduled to the *National Road Transport Commission Act*

¹⁸ Section 61 (Instruments)

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1991 (Cwlth), a regulation may enact provisions for the State that are the same as, or substantially similar to, the law.

- (5) For the provisions mentioned in subsection (4), a regulation may—
- (a) confer powers on the chief executive, the commissioner, an authorised officer or an accredited person; or
 - (b) make transitional provisions.

CHAPTER 7—TRANSITIONAL PROVISIONS, AMENDMENTS AND REPEALS

Reference provisions operate only after repeal of relevant Act

85A. To remove any doubt, it is declared that sections 86 to 91 apply to an Act mentioned in them only after the Act is, or the relevant provisions of the Act are, repealed.

Example—

A reference to the *Carriage of Dangerous Goods by Road Act 1984* or a provision of that Act is not taken to be a reference to this Act until the repeal of the *Carriage of Dangerous Goods by Road Act 1984* or the provision of that Act.

Carriage of Dangerous Goods by Road Act 1984 references

86. A reference to the *Carriage of Dangerous Goods by Road Act 1984* may, if the context permits, be taken to be a reference to this Act.

Main Roads Act 1920 references

87. A reference to the *Main Roads Act 1920* may, other than in relation to transport infrastructure or another matter dealt with under the *Transport Infrastructure Act 1994*, taken to be a reference to this Act.

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Motor Vehicles Control Act 1975 references

88. A reference to the *Motor Vehicles Control Act 1975* may, if the context permits, be taken to be a reference to this Act.

Motor Vehicles Safety Act 1980 references

89. A reference to the *Motor Vehicles Safety Act 1980* may, if the context permits, be taken to be a reference to this Act.

State Transport Act 1960 references

90. A reference to the *State Transport Act 1960* may, other than a reference (whether express or implied) to a provision of that Act repealed by the *Transport Operations (Passenger Transport) Act 1994* and if the context otherwise permits, be taken to be a reference to this Act.

Transport Infrastructure (Roads) Act 1991 references

91. A reference to the *Transport Infrastructure (Roads) Act 1991* may, other than in relation to transport infrastructure or another matter dealt with under the *Transport Infrastructure Act 1994*, taken to be a reference to this Act.

Repeal of Acts

93.(1) An Act mentioned in schedule 2, part 1 is repealed on a day to be fixed by proclamation.

(2) A proclamation under subsection (1) may fix—

- (a) a single day or time for the repeal of an Act; or
- (b) different days or times for the repeal of different provisions of an Act; or
- (c) a day or time for the repeal of only some provisions of an Act.

(3) If an Act, or provision of an Act, mentioned in schedule 2 has not been repealed within 2 years of the commencement of this section, it is repealed by this subsection on the next day.

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(4) A regulation may provide that subordinate legislation, or a provision of subordinate legislation, made under an Act or provision of an Act mentioned in schedule 2 continues to have effect under this Act (with all necessary changes and any changes prescribed under a regulation) for a specified period of not longer than 1 year.

(5) Subsection (4) applies despite the repeal of the Act or provision.

(6) This section expires 3 years after it commences or, if an earlier date is prescribed under a regulation, on that date.

SCHEDULE 2

REPEALED ACTS

section 93

PART 1—PRINCIPAL ACTS

Carriage of Dangerous Goods by Road Act 1984 No. 73

Motor Vehicles Control Act 1975 No. 39

Motor Vehicles Safety Act 1980 No. 3

State Transport Act 1960 9 Eliz 2 No. 48

Transport Infrastructure (Roads) Act 1991 No. 29

SCHEDULE 3

DICTIONARY

section 5

“**accredited person**” means a person who holds an appointment as an accredited person under section 21.¹⁹

“**alternative compliance scheme**” see section 15.

“**approved form**” means a form approved by the chief executive.

“**authorised officer**” means a person who holds an appointment as an authorised officer under section 20.²⁰

“**breath analysing instrument**” means an instrument of a type prescribed under a regulation for verifying, by analysis of a specimen of a person’s breath, what concentration of alcohol is present in the person’s blood.

“**commissioner**” means the commissioner of the police service.

“**compliance plate**” means a plate authorised to be placed on a vehicle, or taken to have been placed on a motor vehicle, under the *Motor Vehicle Standards Act 1989* (Cwlth).

“**corresponding law**”, to a transport Act or a provision of a transport Act, means a law of the Commonwealth or another State that provides for the same matter as—

- (a) for a transport Act—the Act or a provision of the Act; or
- (b) for a provision of a transport Act—the provision.

“**deal with**” includes sell, dispose of and destroy.

“**fee**” includes a tax.

¹⁹ Section 21 (Appointment of accredited persons)

²⁰ Section 20 (Appointment of authorised officers)

SCHEDULE 3 (continued)

“GVM” (gross vehicle mass) means the maximum loaded mass of a vehicle—

- (a) stated on the vehicle’s compliance plate; or
- (b) stated in a way prescribed under a regulation.

“heavy vehicle” means—

- (a) a vehicle with a GVM of more than 4.5 t; or
- (b) a public passenger vehicle; or
- (c) another vehicle providing services on a road for which a licence is required under a transport Act.

“in” a place or vehicle includes on the place or vehicle.

“interstate scheme” see section 16.

“licence” means a licence, permit or certificate under a transport Act, and includes—

- (a) a renewal of the licence, permit or certificate; and
- (b) an endorsement on the licence, permit or certificate.

“motor vehicle” means a vehicle propelled by a motor that forms part of the vehicle, and includes a trailer attached to the vehicle.

“MUTCD” see section 82(1).

“number plate” means a plate or other device designed to be attached to a vehicle to identify the vehicle.

“occupier” of a place includes a person who reasonably appears to be the occupier, or in charge, of the place.

“official traffic sign” see section 82(1).

“on” a place includes within, under and over the place.

“operator” see section 15(2).

SCHEDULE 3 (continued)

“owner” includes—

- (a) for a seized thing—the person from whom the thing was seized unless the chief executive or commissioner is aware of the actual owner; or
- (b) for a vehicle—
 - (i) each person who is the owner, joint owner or part owner of the vehicle; and
 - (ii) a person who has the use and control of the vehicle under a hiring agreement, hire purchase agreement or leasing arrangement; and
 - (iii) the person in whose name the vehicle is registered under a transport Act or a corresponding law;

but does not include the driver of a vehicle when the driver has been provided as part of a hiring agreement for the vehicle.

“performance standard” see section 15.

“person in control” of a vehicle includes—

- (a) the driver of the vehicle; or
- (b) the person who reasonably appears to be the driver; or
- (c) the person who appears to be, claims to be or acts as if he or she is in control of a vehicle.

“place” includes land, premises and water, but does not include a vehicle.

“private vehicle” means a vehicle other than a heavy vehicle.

“public passenger vehicle” has the same meaning as in the *Transport Operations (Passenger Transport) Act 1994*.

“reasonably believe” means believe on reasonable grounds.

“registered” means registered in a register of vehicles kept by the chief executive under a transport Act.

“road” has the meaning given by the *Transport Infrastructure Act 1994*, chapter 5 (Road transport infrastructure).

SCHEDULE 3 (continued)

“trailer” means a vehicle that is built to be towed, or is towed, by a motor vehicle, but does not include a motor vehicle being towed.

“transport Act” means—

- (a) this Act; or
- (b) another Act, or a provision of another Act, administered by the Minister that is prescribed under a regulation; or
- (c) the *Motor Accident Insurance Act 1994* for the following provisions of this Act—
 - section 31 (Power to stop private vehicles)
 - section 32 (Power to stop heavy vehicles)
 - section 47 (Power to set up checkpoints)
 - section 48 (Power to require name and address)
 - section 49 (Power to require documents to be produced)
 - a provision of this Act that is prescribed under a regulation.

“transport coordination plan” means the transport coordination plan developed under the *Transport Planning and Coordination Act 1994*.

“unsafe”, for a thing, means the thing is likely to cause loss of life, bodily injury or damage to property if used in a normal way.

“vehicle” includes any type of transport that moves on wheels and a hovercraft but does not include a train or tram.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 21 March 1997. Future amendments of the Transport Operations (Road Use Management) Act 1995 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

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3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 32 of 1995	7 July 1995
2	to Act No. 58 of 1995	24 January 1996

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	2

6 List of legislation

Transport Operations (Road Use Management) Act 1995 No. 9

date of assent 5 April 1995

ss 1–2, s 92 sch 1 commenced on date of assent

s 93(7) commenced 12 May 1995 (1995 SL No. 124)

remaining provisions commenced 1 July 1995 (1995 SL No. 206)

as amended by—

Transport Infrastructure Amendment (Rail) Act 1995 No. 32 ss 1–2, 23 sch

date of assent 14 June 1995

commenced on date of assent (see s 2(1))

Transport Planning and Coordination Amendment Act 1995 No. 48 pts 1, 5

date of assent 22 November 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 15 December 1995 (1995 SL No. 365)

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2

date of assent 28 November 1995

s 4 sch 2 amdt 2 commenced 5 April 1995

remaining provisions commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995

commenced on date of assent

Motor Accident Insurance Legislation Amendment Act 1996 No. 53 pts 1, 3

date of assent 20 November 1996

pt 1 commenced on date of assent

remaining provisions commenced 6 December 1996 (1996 SL No. 362)

Transport Legislation Amendment Act 1996 No. 62 pts 1, 4

date of assent 9 December 1996

pt 1 commenced on date of assent

s 18 commences on the repeal of the Transport Infrastructure (Roads) Act 1991 s 9.17A (see s 2(1))

(Transport Infrastructure (Roads) Act 1991 No. 29 (rep (as from 1 July 1997) 1995 No. 9 s 93 sch 2 pt 1))

remaining provisions commence 1 May 1997 (1997 SL No. 23)

7 List of annotations

Commencement

s 2 om R2 (see RA s 37)

Contents of strategies

s 8 amd 1995 No. 48 s 15

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False, misleading or incomplete documents

s 53 amd 1995 No. 57 s 4 sch 2

Nomination of responsible operator

s 77A ins 1996 No. 62 s 18

Reference provisions operate only after repeal of relevant Act

s 85A ins 1995 No. 58 s 4 sch 1

Carriage of Dangerous Goods by Road Act 1984 references

s 86 amd 1995 No. 58 s 4 sch 1

Main Roads Act 1920 references

s 87 amd 1995 No. 58 s 4 sch 1

Motor Vehicles Control Act 1975 references

s 88 amd 1995 No. 58 s 4 sch 1

Motor Vehicles Safety Act 1980 references

s 89 amd 1995 No. 58 s 4 sch 1

State Transport Act 1960 references

s 90 amd 1995 No. 58 s 4 sch 1

Transport Infrastructure (Roads) Act 1991 references

s 91 amd 1995 No. 58 s 4 sch 1

Amendment of Acts

s 92 om R1 (see RA s 40)

Repeal of Acts

s 93 amd R1 (see RA s 40)

exp 1 July 1998 or an earlier date prescribed by regulation (see s 93(6))

Declaration about Act's assent

s 94 ins 1995 No. 32 s 23 sch
exp 14 June 1994 (see s 94(4))
AIA s 20A applies (see s 94(3))

SCHEDULE 1—AMENDMENT OF ACTS

amd 1995 No. 9 s 94 (as ins 1995 No. 32 s 23 sch)
om R1 (see RA s 40)

SCHEDULE 2—REPEALED ACTS

amd R1 (see RA s 40); 1995 No. 9 s 93(7); 1995 No. 57 s 4 sch 2

SCHEDULE 3—DICTIONARY

def "GVM" amd 1995 No. 48 s 16
def "transport Act" amd 1996 No. 53 s 12

8 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992 s 5(c)).

Transport Legislation Amendment Act 1996 No. 62 pt 4 read as follows—

PART 4—AMENDMENT OF TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995

Act amended in pt 4

17. This part amends the *Transport Operations (Road Use Management) Act 1995*.

Insertion of new s 77A

18. After section 77—

insert—

‘Nomination of responsible operator

‘77A.(1) If an owner has previously claimed the owner was not the driver and has failed to notify the name and address of the driver of a vehicle that was involved in a camera-detected offence, the chief executive may give written notice requesting the owner to nominate 1 responsible operator for each vehicle registered in the owner’s name whether jointly or otherwise.

‘(2) If the owner wants to nominate the responsible operator the owner must give written notice containing the prescribed particulars to the chief executive within 28 days of receipt of the notice from the chief executive.

‘(3) If a person does not nominate a responsible operator within 28 days, or nominates a person who is ineligible to be a responsible operator, the chief executive may nominate an existing registered owner as the

responsible operator.

‘(4) A responsible operator must be—

- (a) an individual who is—
 - (i) 16 years or more; and
 - (ii) the holder of a licence issued under a law of a State to drive a vehicle on a road; or
- (b) a corporation that is—
 - (i) a company registered under the Corporations Law; or
 - (ii) incorporated by or under an Act; or
 - (iii) incorporated for a public purpose by an Act of this or another State or the Commonwealth; or
- (c) this or another State or the Commonwealth.

‘(5) Except for a nomination by the chief executive, the nomination must be accompanied by the written consent of the responsible operator.

‘(6) If a licence is not required for the normal operation of the type of vehicle being registered and it is not designed to be towed, the responsible operator does not have to be the holder of a licence for the vehicle.

‘(7) A person must not nominate a person as a responsible operator knowing that—

- (a) the nominated person is ineligible to be a responsible operator; or
- (b) any particulars about the nominated person are inaccurate.

Maximum penalty—40 penalty units.

‘(8) A person who has been requested to nominate a responsible operator—

- (a) may subsequently apply for, renew or transfer the registration of a vehicle only if a responsible operator has been nominated for the vehicle; and
- (b) must ensure there is a responsible operator during the registration of the vehicle.

‘(9) If for any reason there ceases to be a responsible operator for a vehicle, the chief executive may nominate a responsible operator.’.